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No. 87-570

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1987

NICHOLAS COLAFELLA, K. LEROY IRVIS, JAMES J. MANDERINO, MATTHEW J. RYAN, and the BIPARTISAN COMMITTEE FOR THE ADMINISTRATION OF THE HOUSE OF REPRESENTATIVES

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF OF THE FLORIDA SENATE AS AMICUS CURIAE IN SUPPORT OF THE PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether members of an investigative committee of a state legislature, who are not themselves targets of a federal criminal investigation, may resist a federal grand jury subpoena for their investigative documents and reports, served during an ongoing legislative investigation?

INTEREST OF THE AMICUS

Amicus, the Florida Senate, is a duly elected legislative body charged by the Constitution of the State of Florida[1] with the responsibility to enact laws and empowered to conduct investigations, and compel attendance of witnesses and production of documents and other evidence upon any matter under investigation before it or any of its committees.[2] Rational and competent decision-making by any legislative body is dependent on a broad and complete base of information. In this regard, Amicus utilizes and will continue to utilize the vital fact-finding capacity of its legislative committees to provide individual

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[1]Article III, Sections 1 and 5, Florida Constitution

[2]Pursuant to Rule 36 of the Court, the parties have consented to the filing of this brief. Their letters of consent have been filed with the Clerk of the Court

legislators with the necessary information upon which to structure initial discussion and debate and, ultimately, to reach intelligent and informed conclusions.

Information derived from committee inquiries of the Florida Senate is important to legislators, not only in evaluating and voting on public policy alternatives, but also in overseeing the implementation of existing state programs. Impairment of this legislative capability would restrict the scope of information available to legislators and thus would threaten the integrity of the legislative process.

The decision by the Third Circuit Court of Appeals sanctions interference of a Federal grand jury in a state

legislative investigative proceeding. By refusing in this instance to recognize a common law immunity available to state legislators under the Federal Constitution, the Court of Appeals' decision disregards the comity principles underlying our federal system of government and calls into question the future independence of the Florida Senate.

The unfettered power of a grand jury to compel the production of legislative investigatory files is contrary to the separation of powers doctrine upon which the federal and Florida forms of government are founded. The chilling effect on witnesses and legislators of a federal prosecutor's

absolute power to intrude on state legislative business will be such that the efficacy of legislative fact-finding will be severely curtailed.

The Speech or Debate Clause in the Federal Constitution ensures a free and independent national legislature, unburdened by restraints imposed by fears of harassment, influence, or control. True federalism calls for comparable respect for the freedom and independence of state legislative bodies. The principles of legislative independence underlying the Federal Speech or Debate Clause are equally applicable to state legislatures. Independence to seek out any information is critical to

the ability of the Florida Senate to function as an effective legislative body. The decision below, imposing a restraint on essential legislative fact-finding powers, is erroneous.

ARGUMENT

Amicus fully adopts the legal reasoning stated by the Pennsylvania House of Representatives in its Petition in this case.

CONCLUSION

Petitioners seek review of a decision of the Third Circuit Court of Appeals which involves questions concerning the nature and extent of common law immunity available to state legislators under the Speech or Debate Clause of the Federal Constitution. For the reasons stated above, Amicus believes the continued viability of this decision

threatens the integrity and independence of Florida's legislative fact-finding process. Amicus, therefore, respectfully requests that this important question of federal law be settled by this Court and the Petition from the Pennsylvania House of Representatives for Writ of Certiorari be granted.

Respectfully Submitted,

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